

THE COSTS OF PROCESSING MURDER CASES IN NORTH CAROLINA

Philip J. Cook, Ph.D.

Donna B. Slawson, M.A., J.D.

with the assistance of Lori A. Gries, B.B.A

Terry Sanford Institute of Public Policy

Duke University

May 1993

Funded by a grant from the State Justice Institute

to the North Carolina Administrative Office of the Courts

1. EXECUTIVE SUMMARY

In this report we compare the resource costs of adjudicating murder cases capitally and

noncapitally in North Carolina. Our analysis is based on an extensive data collection effort by which we were able to develop estimates for costs stemming from murder trials, appeals, and imprisonment. One conclusion is that the extra costs to the North Carolina public of adjudicating a case capitally through to execution, as compared with a noncapital adjudication that results in conviction for first degree murder and

a 20-year prison term, is about \$329 thousand, substantially more than the savings in prison costs, which we estimate to be \$166 thousand. We note that a complete account must also include the extra costs of cases that were adjudicated capitally but did not result in the execution of the defendant. All told, the extra cost *per death penalty imposed* is over a quarter million dollars, and *per execution* exceeds \$2 million. This last estimate is quite sensitive to our assumption that ten percent of death-sentenced defendants are

ultimately executed. These and other assumptions and qualifications are included throughout the report.

A section-by-section summary follows.

2. *Objectives.* Our objective is to provide estimates of the cost of capital adjudication that will be useful to legislators and criminal justice officials. The law and practice of capital punishment change from year to year as a result of new case law, amendments to existing statutes, and revisions in standard operating procedures by district attorneys and other officials. Our estimates are intended to help inform these decisions and predict their consequences for the utilization of resources in the criminal justice system.

There have been a handful of other studies that have attempted to cost out the death penalty, but ours is the most complete and the first to utilize direct observation of a number of cases at each stage of the process.

3. *Constitutional and Statutory Framework* The legal doctrine that as a punishment "death is different" is reflected in the fact that capital cases tend to be litigated more thoroughly than other serious murder cases. For example, in capital trials indigent defendants are entitled to two court-appointed attorneys, the jury must be "death qualified," and in most states the jury rather than the judge is responsible

for making the decision whether to sentence the defendant to life imprisonment or death. These and other protections stem from constitutional and statutory provisions at both the state and federal level, as well as the especially diligent effort ordinarily expected of practitioners in these cases.

4. *Accounting Rules.* "Cost" in this report is defined as the *opportunity -cost* of the extra resources required to adjudicate capital cases, and more specifically as the value of the additional resources consumed by these cases. Our study is limited to the costs borne by the state and county government agencies, omitting consideration of private costs and costs to the federal government. It should be emphasized that this report is not an evaluation of the death penalty, since our focus is almost exclusively on the cost side; the only benefit we measure is the savings in imprisonment cost. (We also consider the

possibility that the death penalty serves to encourage some murder defendants to plead guilty and thus saves the state the cost of the trial. This is a real possibility, but it is somewhat unusual in North Carolina for a district attorney to accept a guilty plea after prosecuting a case capitally, in part because of the ban on sentence bargaining in first degree murder cases.)

5. *Unit Costs.* We use standard accounting procedures to estimate the unit costs of key resources, including the time of attorneys in the offices of the district attorneys, public defenders, the Appellate Defender, and the Attorney General. The value of an hour of an attorney's time includes the prorated position cost, together with the appropriate "load" from support staff and general administration. We also estimate the unit cost for a day in Superior Court, and for the time of the justices and law clerks of the Supreme Court of North Carolina.

6. *Trial Court Costs.* To estimate the costs of murder trials, we collected data on a large sample of such cases in six prosecutorial districts, supplemented with data on specific cases in other districts. We found that the average cost of a bifurcated capital trial is \$84 thousand, and of a capital trial that ends with the guilt phase, \$57 thousand. The average for noncapital murder trials is just \$17 thousand.. Using regression analysis to adjust for other differences among these cases, we conclude that a bifurcated trial costs about \$55 thousand more than a noncapital murder trial. We then go on to estimate the extra costs in

the trial courts *per death penalty imposed*, which works out to \$194 thousand. This figure includes the extra costs of capital prosecutions that do not result in the imposition of the death penalty, as well as the extra costs resulting from the fact that capital cases are more likely than other murder cases to be remanded to the trial courts for resentencing or retrial.

7. *Appellate and Postconviction Costs.* At our request, the justices and law clerks of the Supreme Court of North Carolina kept records for 12 months on the amount of time they devoted to direct appeals of murder cases. Based on these data, and interviews with attorneys in the offices of the Appellate Defender and Attorney General, we conclude that a direct appeal in a death case is about \$7 thousand more costly than in a life case. For postconviction proceedings, we focused on two capital cases, *Gardner* and *Maynard*, both of which concluded in 1992 after being fully litigated. The average postconviction cost to the state of these two cases was \$255 thousand.

8. *Prison Costs.* The operating cost of a year in prison ranges from \$16 thousand per inmate for minimum security to \$23 thousand per inmate for close security. Facility costs are about \$750 per inmate annually. An inmate who serves ten years on death row and is then executed costs the Department of Corrections \$166 thousand less (in present value terms) than an inmate who serves a "life" term and is paroled after 20 years.

9. *Summing Up.* "The" cost of the death penalty depends on the definition. Comparing two hypothetical cases, one of which concludes with the defendant's execution after ten years on death row, and the other with the defendant serving 20 years in prison, yields an answer of \$163 thousand as the extra cost for the capital case. Of greater relevance to policy is an estimate that includes the costs of cases that are adjudicated capitally but the defendant is not executed. This more complete measure of cost can be reported

either as a ratio to the number of death sentences imposed, or as a ratio to the number of executions. The latter is perhaps the most meaningful, and also the most uncertain, given our uncertainty concerning the fraction of death sentences that will ultimately be carried out. It is possible to use our data to make a rough estimate of the statewide costs incurred over a particular time period. Over the two-year period 1991 and 1992 there were a total of 94 defendants tried capitally (excluding retrials and resentencing hearings). Of these, 29 were sentenced to death. These capital trials would have cost the state and counties about \$4.3 million less if they had proceeded noncapitally. If the death-sentenced cases follow a postconviction track similar to that of cases from previous years, the cost to the state will total about \$2.8 million for appeals and postconviction proceedings, and \$1.4 million for retrials and resentencing proceedings ordered by the appellate courts. Recent history suggests that approximately 10 percent of the death-sentenced defendants will be executed, at a savings in imprisonment costs of \$0.5 million. Combining all these figures gives an overall extra cost on the order of \$8 million, or an average of \$4 million per year.

The extra costs of adjudicating murder cases capitally outweigh the savings in imprisonment costs. As it is currently implemented, the death penalty cannot be justified solely on the grounds of economy. The death penalty is usually justified on the basis that it offers public benefits in the form of greater deterrent and retributive value than life imprisonment; these benefits, if they exist, are not free, but rather come at a substantial cost to the public.

